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In re Application of	:	
EBERL, Heinrich A. et al.	:	DECISION
Application No.: 10/562,230	:	
PCT No.: PCT/EP00/09841	:	ON PETITION UNDER
Int. Filing Date: 07 October 2000	:	
Priority Date: None	:	37 CFR 1.137(b)
Docket No.: 10795.56948US	:	
For: INFORMATION SYSTEM	:	

This is a decision on applicants' "Renewed Petition Under 37 CFR 1.137(b)," filed in the above-captioned application on 24 March 2006.

BACKGROUND

On 07 October 2000, applicants filed an international application number PCT/EP00/09841. A demand for international preliminary examination was filed on 24 April 2002, prior to the expiration of nineteen months from the priority date. As such, the thirty month period for entering the national stage in the United States expired at midnight on 07 April 2003.

On 23 December 2005, applicants filed a transmittal letter for entry into the national phase in the United States, accompanied by a petition to revive.

On 24 January 2006, the Office mailed Decision On Petition Under 37 CFR 1.137(b), dismissing applicants' petition without prejudice.

On 24 March 2006, applicants filed a renewed petition under 37 CFR 1.137(b).

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (2) the required reply, (3) the petition fee required by law (37 CFR 1.17(m)), and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995). Pursuant to 37 CFR 1.137(b)(3), additional information may be required where there is a question whether the delay was unintentional.

Items (2), (3) and (4) were previously satisfied.

Item (1) has not been satisfied. While the required statement was previously provided, applicants' petition indicated that some of all of the delay in filing the national phase of this application may have been intentional.

Applicants argue that it was not possible for any inventor to file in the US because the inventors were not the Applicant for the PCT. This is not correct. The inventors are the applicants for the United States with only narrow exceptions. See 35 U.S.C. 111. It is not necessary for an applicant to hold the entire right to an invention to file a patent application for it. See 37 CFR 1.47(a).

Applicants argue that under German law Physoptics was the assignee for the entire right to the application, but that the bankruptcy trustee had an obligation to turn over the application to the inventors to pursue. However, there are several flaws with this argument.

First, this is an argument under German law and inventors recourse is under German law, not before the USPTO. As previously indicated, US law did not prevent inventors making a national phase filing before the USPTO, notwithstanding applicants' allegation that German law assigns the invention to the corporation, Physoptics. Alternatively, as assignee of the entire interest in the invention, Physoptics was free to not pursue the invention and that decision to abandon the invention is an intentional abandonment, binding on the inventors. However, applicants have not set out facts that establish the alternative scenario.

Second, this application went abandoned on 07 April 2003 for failure to pay the basic national fee, but applicants only filed suit to pursue this application in November 2003, when the application was already abandoned.

Finally, after obtaining a release of Physoptics rights in the application, inventors indicate that they further delayed in making a national phase filing to sort out how the expenses would be divided. To revive an application unintentionally abandoned, the abandonment and the entire delay in filing a grantable petition must be unintentional. A delay to sort out how to split expenses appears to be an intentional delay. See MPEP 711.03(c)(1).

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.137(b) is **DISMISSED**, without prejudice.

The application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)."

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in cursive script that reads "Erin P. Thomson".

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